Supreme Court, U.S.
FILED
AUG 19 1988
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 87-2089

In The

Supreme Court of the United States

October Term, 1988

M. J. CARLISLE,
Plaintiff and Petitioner,

v.

STATE OF CALIFORNIA, COUNTY OF SAN MATEO,
HON. THOMAS M. JENKINS,
HON. JUDITH WHITMER KOZLOSKI,
HON. JAMES OTIS MILLER,
HON. PHRASEL L. SHELTON,
Defendants and Respondents.

On Petition For Writ Of Certiorari From The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

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I.

STATEMENT OF THE CASE AND PROCEEDINGS BELOW

Petitioner asserted subject matter jurisdiction in the United States District Court for the Northern District of California pursuant to Title 28 United States Code § 1343. Petitioner sought damages alleging violations of Title 42 United States Code § 1983 by respondents while they were acting in their capacities as judges of the State of California, County of San Mateo.

Petitioner never achieved valid service of process on the defendant judges. Accordingly, they voluntarily appeared before the District Court by filing a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. On February 10, 1987, the court granted the defendant judges' motion to dismiss and denied petitioner's motion for summary judgment. On February 12, 1987, the order dismissing the action was entered in the civil docket. On March 2, 1987, petitioner filed a timely notice of appeal. Fed.R.App.P. 4(a)(1).

The judgment disposed of all claims as to all parties, creating jurisdiction in the Ninth Circuit Court of Appeals pursuant to Title 28 United States Code § 1291. On March 8, 1988, the Ninth Circuit affirmed the District Court's order of dismissal. Petitioner's motion for rehearing was subsequently denied on April 5, 1988.

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II.

STATEMENT OF FACTS

In January 1986, petitioner M.J. Carlisle (Carlisle) appeared in the Municipal Court of the State of California, County of San Mateo, before the Honorable Phrasel L. Shelton (Judge Shelton) to be arraigned for violations of California Vehicle Code § 23152(a) and (b). (CR 1; 2:25-28)[1] At all times, Judge Shelton was "acting in his regular and official employment as a judge of San Mateo County". (CR 1; 3:10-11)

Carlisle asked to be represented by a friend, Jimmie L. Guerrero (Guerrero). (CR 1; 2:8-3:1) Judge Shelton denied Carlisle's motion because Guererro is not licensed to practice law by the State of California. (CR 1; 2:2-5)

In February 1986, Judge Shelton heard two motions brought by Carlisle. Judge Shelton denied Carlisle's motions for a jury to determine the law as well as the facts. He also denied Carlisle's renewed motion to be represented by Guerrero as "counsel of choice." (CR 1; 3:8-14)

One week later, on February 13, 1986, Carlisle appeared in the Municipal Court of the State of California, County of San Mateo, before the Honorable Judith Whitmer Kozloski (Judge Kozloski) for a pretrial hearing. Judge Kozloski was acting in her "regular and official employment as a judge of San Mateo County". Carlisle did not want to proceed with the case without counsel of his choice. Judge Kozloski informed Carlisle that he could

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[1]The notation "CR" refers to the Court Record in the proceedings below.

only be represented by counsel licensed by the State of California. (CR 1; 3:16-24)

In March 1986, Carlisle appeared in the Municipal Court of the State of California, County of San Mateo, before the Honorable James Otis Miller (Judge Miller) for jury trial. Judge Miller was acting in his "regular and official employment as a judge of San Mateo County". Carlisle again complained that he was being denied counsel of his choice. Judge Miller explained that Carlisle could not be represented by unlicensed counsel. (CR 1; 3:26-4:6)

In April 1986, after he had been convicted of violating California Vehicle Code § 23152(a) and (b), Carlisle appeared before Judge Miller for sentencing. Judge Miller, while acting in his "regular and official employment as a judge of San Mateo County", sentenced Carlisle to a term in the San Mateo County Jail. (CR 1; 4:8-15)

Shortly thereafter, Carlisle filed a petition for a writ of habeas corpus in the Superior Court of the State of California, County of San Mateo. The petition was reviewed by the Honorable Thomas M. Jenkins (Judge Jenkins) "as a part of his regular and official employment as a judge of San Mateo County". Judge Jenkins denied Carlisle's application. Judge Jenkins cited the Business and Professions Code and indicated that counsel of choice was properly denied. (CR 1; 5:8-15)

The complaint alleges that Judges Shelton, Kozloski, Miller and Jenkins "are now and at all times material hereto were duly appointed, employed and acting judges of the County of San Mateo". (CR 1; 1:28-2:3)

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III.

SUMMARY OF ARGUMENT

Petitioner alleges that he was denied a number of Constitutional "rights" by respondent judges when they denied his request to be represented by his friend, Mr. Guerrero, who is not licensed to practice law. Petitioner's claim against the judges is barred by the well-settled doctrine of judicial immunity, which protects judges from civil liability for all actions taken in the regular and official exercise of their judicial authority. Since there is no right to legal representation by lay persons not licensed to practice law, the respondent judges did not exceed their jurisdictional authority in denying petitioner's request.

The law in this area is clear and well-settled. There is no conflict between the various federal or state courts on the issues presented in this case, nor has the Ninth Circuit's decision deviated from the law as it is settled and accepted. The issues have been addressed by this Court and the Ninth Circuit's decision is consistent with the decrees of this Court.

Since there are no special and important reasons for the Court to hear this case under Rule 17 of the Supreme Court Rules, the Petition for Writ of Certiorari should be denied.

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IV.

LEGAL ARGUMENT

A. Petitioner Cannot State a Claim for Relief Against Any of the Judges

The immunity of a judge for acts within his jurisdiction has roots extending to the earliest days of the common law. See *Floyd v. Barker*, 12 Coke 23, 77 Eng.Rep. 1305 (1608). This Court adopted the Rule of Absolute Judicial Immunity in civil suits for damages in the landmark case of *Bradley v. Fisher*, 13 Wall 335, 2 L.Ed. 646 (1872).

The *Bradley* court adopted the language and rationale of a decision of the Court of Exchequer explaining the doctrine of judicial immunity as follows:

> It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law, independently and freely, without favor and without fear. This provision of the law is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.

Scott v. Stansfield, 3 L.R. Ex 200 (1868), quoted in *Bradley v. Fisher*, 13 Wall 335, 350, 20 L.Ed. 649 (1872), and *Pulliam v. Allen*, 466 U.S. 522, 532, 80 L.Ed.2d 565 (1984). In 1984, the *Pulliam* court quoted the foregoing language, describing it as "close to our contemporary understanding of the doctrine" of judicial immunity.

The principles of judicial immunity articulated in the *Bradley* case over a century ago, and directly applicable

to state court judges, were most recently reaffirmed in *Stump v. Sparkman,* 435 U.S. 349, 55 L.Ed.2d 331, 98 S.Ct. 1099 (1978), reh.den. 436 U.S. 951, 56 L.Ed.2d 795, 98 S.Ct. 2862. In *Stump,* an Indiana circuit court judge approved the ex parte petition of the parents of a "somewhat retarded" fifteen year-old daughter requesting her sterilization. The daughter was told she was to have her appendix removed, and the sterilization was performed. Shortly thereafter she married and discovered that her inability to become pregnant was the result of a sterilization. As to the defendant Indiana Circuit Court Judge, the Court applied the doctrine of judicial immunity, holding:

> A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors.

Stump, supra, at 359.

The *Stump* court articulated the test used in determining the application of judicial immunity:

> The necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him . . . the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge. A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the "clear absence of all jurisdiction."

Stump, supra at 356-357, 55 L.Ed.2d 331, quoting *Bradley,* supra, 13 Wall, at 351, 20 L.Ed. 646.

None of the defendant judges acted in the "clear absence" of subject matter jurisdiction. Indeed, the exist-

ence of subject matter jurisdiction at all times in the underlying criminal action is beyond dispute. There is no need to broadly construe the scope of the defendant judges' jurisdiction as the acts complained of fell squarely within their individual jurisdictions.

Article VI, Section I of the California State Constitution vests the judicial power of the state in both Superior and Municipal courts, among others. It is undisputed that the four defendant judges were properly authorized by law to hold their respective offices at all times mentioned in the complaint. Article VI, Section X of the Constitution grants original jurisdiction to Judges of the Superior Court in Habeas Corpus proceedings. Judge Jenkins exercised this grant of jurisdiction when he considered and ruled on petitioner's petition.

Code of Civil Procedure § 166 vests all judges with the power to decide all writs and motions concerning the matters within the jurisdiction of their respective courts. Judges Kozloski, Miller and Shelton all entertained and denied motions relating to matters properly appearing on their official court calendars. That petitioner brought these motions strongly suggests that he recognized the jurisdiction of these courts to rule on such motions. There has been no assertion that any of the judges acted with a "clear absence" of all subject matter jurisdiction. To the contrary, the complaint alleges that the defendant judges were acting within the scope of their duties as judges. There is simply no question that the defendant judges acted in each instance within their jurisdiction.

The test of a judicial officer's immunity from damages is not whether he or she committed an error of judg-

ment in acting as they did, but whether the act was within the general scope of their judicial powers liberally construed. Indeed, petitioner's complaint can only be interpreted as seeking relief from "errors" committed by the defendant judges in ruling as they did. The doctrine of judicial immunity is applied to protect judges who commit error while acting within the subject matter jurisdiction of their courts. However, in this case, as demonstrated below, no error was committed.

It is obvious that the acts of hearing and ruling upon motions and applications for writs are judicial acts which were properly within the jurisdiction of the defendant judges who acted upon them. Accordingly, the doctrine of judicial immunity is prima facie applicable to the acts of the judges in this case. The judgment of the district court dismissing the action for failure to state a claim upon which relief can be granted and the decision by the Ninth Circuit affirming that decision were, therefore, correct. The decisions in the Courts below fall squarely within the holdings of this Court. The Petition for Writ of Certiorari should be denied.

B. Judicial Immunity Bars a Claim Under 42 U.S.C. § 1983

In *Pierson v. Ray*, 386 U.S. 547, 18 L.Ed.2d 288 (1967), the United States Supreme Court, Mr. Chief Justice Warren writing for the Court, held that the doctrine of judicial immunity precludes a claim for relief against state court judges asserted under 42 U.S.C. 1983. Again relying on the seminal *Bradley* case, the court states:

> We do not believe that this settled principle of law (judicial immunity) was abolished by § 1983 . . . The

> legislative record gives no clear indication that congress meant to abolish wholesale all common law immunities . . . we presume that congress would have specifically so provided had it wished to abolish the doctrine.

Pierson, supra, at 554-55. In *Pierson* the court remarked that since 1951 the courts of appeals had consistently held that judicial immunity is a defense to an action under § 1983.

Petitioner's entire complaint is premised upon the application of 42 U.S.C. § 1983 to the facts of this case. He has clearly failed to state a claim upon which relief can be granted.

C. There is no Right to Lay Legal Representation

Petitioner alleges that the defendant judges violated his civil rights by denying him the "right" to lay representation. No such "right" exists.

Each circuit which has considered the question has held that there is no right to representation by persons who are not qualified attorneys. The Sixth Amendment guarantees a defendant the right to self-representation or representation by an attorney admitted to practice law, not lay representation. *U.S. v. Hoffman*, 733 F.2d 596, 599 (9th Cir. 1984), cert. denied, 469 U.S. 1039. *U.S. v. Wright*, 568 F.2d 142 (9th Cir. 1978) citing, among others, *Pilla v. American Bar Association*, 542 F.2d 56 (8th Cir. 1976).

D. Dismissal of § 1983 Claims is Appropriate When Based on the "Right" to Lay Representation

In *Turner v. American Bar Association*, 407 F.Supp. 451 (D.C. Tex. 1975) aff'd sub nom; *Taylor v. Montgom-*

ery, 539 F.2d 715 (7th Cir. 1976) (without opinion) and *Pilla*, supra, it was held that the term "counsel," as used in the Sixth Amendment provision that in all criminal prosecutions the accused shall enjoy the right to the assistance of counsel for his defense, does not include unlicensed laymen. These courts also held that the First Amendment guarantees of freedom of association and right to petition the government for redress of grievances does not confer a right to unlicensed lay representation. In dismissing petitioner's § 1983 claim against several judges for depriving them of the "right" to unlicensed counsel, the District Court wrote:

> As there exists no right or privilege to have unlicensed counsel represent the Plaintiffs at trial, the Plaintiffs' attempt to state causes of action under 42 USCA §§ 1981-1986 for deprivation of the alleged right must necessarily fail and all Defendants' Motions to Dismiss all civil rights claims for failure to state a claim upon which relief can be granted are hereby granted.

Turner, supra, at 480.

In California, only members of the State Bar are licensed to practice law. Business and Professions Code 6002. No person is permitted to practice law without being an active member of the State Bar. Business and Professions Code § 6125. It is a misdemeanor for anyone to practice law in this state who is not an active member of the State Bar. Business and Professions Code § 6126. The text of each of these statutes is reproduced in Exhibit A.

The foregoing authorities reveal that the defendant judges in this case properly denied the motions before

them for lay representation or in the case of Judge Jenkins, the application for writ of habeas corpus. If the judges had not ruled as they did, they would have been sanctioning the commission of a misdemeanor. As judges, sworn to uphold the Constitution and laws of the State of California, permitting an unlicensed lay person to represent another individual in legal proceedings would have constituted an act in excess of their jurisdiction, violated their oaths of office, and made them aiders and abettors to the commission of a misdemeanor. None of the judges committed error in ruling as they did on Petitioner Carlisle's requests.

E. The California Application of Judicial Immunity Extends to All Defendant Judges

The earliest California case applying the fundamental principle of judicial immunity was *Turpen v. Booth*, 56 Cal. 65, 38 A.m.Rep. 48 (1880). That case relied on *Bradley* in holding that a grand juror served in a quasi-judicial status and was not civilly responsible, no matter how erroneous his findings or how malicious his motive, for his action on the grand jury. From that point onward, California law has consistently reaffirmed and extended the doctrine of judicial immunity.

The California case law that has addressed the subject has uniformly and consistently granted judicial immunity from civil suits to judges in the exercise of their judicial functions. That is true even if the acts complained of are in excess of the jurisdiction of the judge and are alleged to have been done maliciously and corruptly. Moreover, the rule is applied in California to acts

of judges of an inferior court as well as to courts of general jurisdiction. *Tagliavia v. County of Los Angeles,* 112 Cal.App.3d 759, 761, 169 Cal.Rptr. 467 (1980). The *Tagliavia* court cites *Stump* and *Bradley* as examples of the extent of the application of the common law doctrine in California.

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V.

CONCLUSION

As a matter of law, Petitioner Carlisle cannot prevail on any claim for relief asserted in the complaint. The judges are entitled to absolute judicial immunity since, at all times mentioned in the complaint, it is undisputed that they acted in their capacities as judges of the State of California.

The decisions rendered by the District Court and the Ninth Circuit are in complete conformity with the decisions of this Court and the other federal circuits. There is no conflict between courts as to the applicable law and there is no special or important reason for the Court to hear this case.

Accordingly, Judges Shelton, Kozloski, Miller and Jenkins respectfully request that this Court deny the Petition for Writ of Certiorari in its entirety.

Dated: August 19, 1988

Respectfully submitted,

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EXHIBIT A

California Business & Professions Code § 6002

§ 6002. Members of State Bar. The members of the States Bar are all persons admitted and licensed to practice law in this State except justices and judges of courts of record during their continuance in office.

California Business & Professions Code § 6125

§ 6125. Practice without active membership. No person shall practice law in this State unless he is an active member of the State Bar.

California Business & Professions Code § 6126

§ 6126. Unlawful practice or advertising as misdemeanor. Any person advertising himself as practicing or entitled to practice law or otherwise practicing law, after he has been disbarred or while suspended from membership in the State Bar, or who is not an active member of the State Bar, is guilty of a misdemeanor.